IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 114 OF 2006

Mr. Jowett D'Souza,
Major s/o Torcato D'Souza,
r/o H.No.139, Ambeaxir,
Semabatim, Colva, Salcete. ... Applicant

versus

State ... Respondent

Mr. Arun Bras De Sa, Advocate for the Applicant.

Mr. S. N. Sardessai, Public Prosecutor for the State/Respondent.

CORAM : N. A. BRITTO, J.

DATE : 2ND FEBRUARY,2006

ORAL ORDER

Heard Mr. Arun Bras De Sa, the learned Counsel on behalf of the applicant and Mr. S. N. Sardessai, the learned Public Prosecutor on behalf of the State.

2. The applicant is an accused in Crime No.83/05 registered under Sections 304-B and 306 I.P.C. and which has been registered after a report of a magisterial inquiry dated 27-12-2005, under Section 176 of Criminal Procedure Code (Code, for short) was submitted to the respondent.

3. The applicant approached the Court of Sessions for anticipatory bail but the same was dismissed by Order dated 16-1-2006 and, therefore, the applicant has now approached this Court for the grant of anticipatory bail.

4. The applicant married Shammi B. Naik alias Shammi D'Souza on 25-6-2005 at the Church of Our Lady of Merces at Colva. The applicant's wife, the said Shammi D'Souza was pregnant of about three months till she committed suicide by hanging on the night of 14/15-11-2005. She committed suicide by leaving a typed suicide note behind and which was apparently typed at 2.00 p.m. on 14-11-2005 and as stated by the learned Public Prosecutor Mr. S. N. Sardessai, the said suicide note was posted, amongst others, to the Police Inspector of Colva Police Station as well as the Parish Priest who had solemnized

their marriage.

5. In the said suicide note, the deceased Shammi D'Souza has made it quite clear as to why she was taking the drastic step of ending her life and amongst the persons she blamed are none other than her mother-in-law Celia Rodrigues, her father-in-law Torcato D'Souza and her elder brother-in-law Gilroy D'Souza. The said Shammi D'Souza in the said suicide note has practically exonerated the applicant herein by referring to him as a straight type of person who cannot bear injustice. Infact, the deceased Shammi D'Souza has gone to the extent of stating in the said suicide note that she as well as the applicant were the victims of the ill-treatment of the said Celia Rodrigues, Torcato D'Souza and Gilroy D'Souza.

6. Apparently on the night of 14/15-11-2005, the applicant herein was not at the matrimonial house, the applicant having gone to Calicut to attend the Court of Judicial Magistrate, First Class at Malappuram, Calicut and returned on 15-11-2005 only to find his wife Shammi D'Souza hanging to a fan, in her bedroom.

7. The learned Sessions Judge appears to have disbelieved the applicant's story that he was away in Calicut at the time when his wife committed suicide and this was inspite of the fact that on behalf of the applicant summons issued by the learned J.M.F.C., Mallappuram along with copy of the roznama were submitted before him. Not only that in the reply filed before the learned Sessions Judge, it was clearly stated by the Investigating Officer that the applicant had telephoned on 13-11-2005 that the case before the Magistrate at Calicut was a money making racket and also inspite of the fact that the deceased Shammi D'Souza in her suicide note had clearly stated that the applicant was out of station and would be returning only on Tuesday(15-11-2005). It appears that the learned Sessions Judge appears to have been swayed by letter written by one Sheetal Kamat dated 18-11-2005 in which she had stated that the death of Mrs. Shammi D'Souza was a planned murder by Mr. Jowett and his family and which they have termed it as a suicide case. It is also stated in the said letter that many people had seen the applicant in town on the previous day of murder. It appears that till date the Investigating Officer has chosen not to record a statement of the said Sheetal Kamat to verify as to what

she has stated was correct or not. Before this Court, on behalf of the applicant, a letter in the form of a certificate issued by the Advocate P. Rajeev has been filed stating that he along with the applicant who is a fifth accused in C.C. No.169/2004 and others had appeared before the learned J.M.F.C.(Forest Court), Manjeri, Mallappuram District on 14-11-2005.

8. Be that as it may, if the Investigating Officer sought to rely on the said letter of Sheetal Kamat which has not been verified till date there has been no explanation from the Investigating Officer as to why the case has been registered only against the applicant and not the other family members of the applicant whom the said Sheetal Kamat has implicated. There is also no explanation from the Investigating Officer why inspite of the said suicide note left behind by the deceased Shammi D'Souza no case has been registered against the said Celia Rodrigues, Torcato D'Souza and Gilroy D'Souza or as to why they have not been arrested till date or for that matter why the applicant was not arrested till date even after the application for anticipatory bail filed by him was rejected by the learned Sessions Judge by his Order dated 16-1-2006. A faint submission

has been made by the learned Public Prosecutor Mr. Sardessai that the applicant was not arrested because he was absconding. Such a submission cannot be accepted for the first time before this Court since such a submission was not made in the reply filed before the learned Sessions Judge by the Investigating Officer.

9. One does not know whether the Police Inspector carried out any inquiry as contemplated by Section 174 of the Code. Only based on the report submitted by the Sub Divisional Officer dated 27-12-2005 that the said crime has been registered against the applicant alone and not against the other members of the family inspite of the fact that the deceased Shammi D'Souza has implicated them. The conclusion arrived at by the S.D.M. in his report dated 27-12-2005 does not appear to have any sound basis for, inter alia, it is observed therein that the deceased might have felt financially insecure that the applicant was in financial crisis and his business was running in a loss and he was dragged into many Court matters. On the basis of the same, no prima facie inference can be drawn that the applicant had subjected the deceased Shammi D'Souza to cruelty or harassment

or for that matter the applicant had abeted her suicide. Inspite of the deceased Shammi D'Souza having given a clear chit to the applicant as regards his non involvement in her suicide, it appears that somehow the Investigation Agency by hook or by crook is interested to proceed with the case and that too against the applicant alone.

10. As already stated there has been no explanation from the Investigation Agency as to why the applicant was not arrested either from 14-11-2005 when the deceased Shammi D'Souza committed suicide in case there was at all any suspicion against the applicant as regards his involvement in her suicide or for that matter after 27-12-2005 when the report was submitted by the Sub Divisional Magistrate, Margao. The applicant was not arrested even thereafter inspite of his application for anticipatory bail was rejected. The only inference which can be drawn from the aforesaid facts is that only because an anticipatory bail application was filed by the applicant that his bail was being opposed and for the same reason now before this Court.

11. Mr. Sardessai, learned Public Prosecutor on behalf of the Investigation Agency has submitted that the presence of the applicant in custody is required in order to verify the signature of the deceased Shammi D'Souza on the said suicide note. However, the learned Public Prosecutor has not been able to provide any explanation why the said signature could not have been verified so far inspite of the fact that the pass books and cheque books of the deceased Shammi D'Souza having already been attached by the Investigating Officer.

12. At this stage, there is nothing to disbelieve the suicide note left behind by the deceased. In the light of the said suicide note, it does not appear that there could be any suspicion regarding the involvement of the applicant in the suicide of the deceased. Considering the totality of the facts of the case this was a fit case to admit the applicant to anticipatory bail. Hence, the application is granted. The applicant shall join the investigations forthwith and if arrested by the Investigating Officer he shall be released upon execution of a bond of Rs.10,000/- with one surety in the like amount to the satisfaction of the Investigating Officer.

Authenticated copy of the order be given to the learned Counsel.

N. A. BRITTO, J.

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